

October 21, 2019

RE: FOIA Request for documents and information concerning communications between the Texas Commission on Environmental Quality and the United States Environmental Protection Agency related to ethylene oxide

Dear FOIA officer:

This is a request for records pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and applicable Environmental Protection Agency (USEPA) Regulations, 40 C.F.R. § 2.100, et seq., from the Environmental Advocacy Clinic at Northwestern University Pritzker School of Law (“EAC”).

The requested records pertain to:

Communications between USEPA and Texas Commission on Environmental Quality related to ethylene oxide or ethylene oxide emissions

## **I. Requested Records and Disclosure Method**

The request is for all documents and communications in any form or format, including electronic communications and postings, data, maps and diagrams, related to or reflecting the following, for the timeframes specified:

1. All documents related to any communications between USEPA and the Texas Commission on Environmental Quality related to ethylene oxide or ethylene oxide emissions and the regulation of ethylene oxide or ethylene oxide emissions since May 1, 2019

## **II. Request for a Fee Waiver (or Reduction)**

EAC requests that EPA waive any fee it would otherwise charge for searching for and producing the requested records; FOIA dictates that the requested records be provided without charge “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1). The Environmental Advocacy Clinic meets the requirements for a fee waiver. *See* 40 C.F.R. § 2.107(l)(2).

### **A. Subject of the request**

The records requested here pertain to EPA’s review or investigation of emissions of ethylene oxide.

A full fee waiver is requested under 5 U.S.C. § 552(a)(4)(A)(iii) (granting a fee waiver where “disclosure of the information is in the public interest because [the information] is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester”).

The requested records concern “the operations or activities of the government.” 40 C.F.R. 2.107(I)(2)(i). USEPA has the responsibility to take action in conjunction with its counterpart state agencies under a broad range of statutes, including, the Clean Air Act and Clean Water Act. The requested records provide information related to the activities of USEPA in its study, review or investigation of emissions of EtO in Texas.

## **B. Informative value of the records to be disclosed**

The requested records are “likely to contribute to” the public’s understanding of government operations and activities.” 40 C.F.R. § 2.107(I)(2)(ii). The public does not currently possess comprehensive information regarding the government’s role in addressing public health, environmental, or other concerns related to acceptable levels of EtO exposure risks as proposed by the Texas Commissions on Environmental Quality. There is more than a reasonable likelihood that these records have informative value to the public because citizens who would be affected by the proposed changes in these regulations are concerned about the potential health impacts of EtO exposure and the public at large has an interest in understanding the impacts of these and similar regulations on air, soil, and water quality and their health. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

Residents who live, work and play near EtO-emitting facilities will benefit from an understanding of the actions taken by USEPA to alleviate present and potential risks to their community. The Environmental Advocacy Clinic represents a community group, Stop ETO in Lake County, a group of affected residents who live in the area of Lake County, Illinois impacted by the emissions from and activities at the facilities. The Environmental Advocacy Clinic and Stop ETO in Lake County, are regularly in conversation with the broader community; they will help disseminate records and information provided to the public through meetings, social media, and other communications, which will fact increase public understanding of the health risks related to EtO exposure.

The Environmental Advocacy Clinic at the Northwestern University Pritzker School of Law is a public interest organization, which advocates on behalf of the public on environmental matters. The Northwestern University Pritzker School of Law is not-for-profit, educational organization in good standing with the Secretary of State of Illinois. The records are not requested in furtherance of any commercial interest. 40 C.F.R. 2.107(I)(3)(i).

If a fee waiver is not granted, please contact me at 312-503-0052 or n-loeb@northwestern.edu with an estimate of expenses and hold for approval before proceeding. If the fees are less than \$100, it is possible that to expedite disclosure, the Environmental Advocacy Clinic will, if needed and under protest, pay fees in accordance with EPA’s FOIA regulations at 40 CFR §2.107(c)(1)(iii). If access to the requested records is denied, please provide a detailed explanation of the reason for denial.

## **C. Significance of the contribution to public understanding**

The records requested will shed light on a matter of considerable public interest and concern: emissions of Ethylene Oxide, which is known to be extremely hazardous and carcinogenic. Citizens are concerned about the type and extent of exposure that they endure as a result of these regulations.

Disclosure would help the public to more effectively evaluate the potential harm of EtO exposure, and to better understand and evaluate EPA's actions in ensuring that the IRIS findings accurately represent the risk to human health.

Thank you for your assistance. Please call or email me with any questions.

Sincerely,

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